

LATHAM & WATKINS LLP  
Michele D. Johnson (Bar No. 198298)  
*michele.johnson@lw.com*  
650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925  
Telephone: +1.714.540.1235  
Facsimile: +1.714.755.8290

Elizabeth L. Deeley (Bar No. 230798)  
*elizabeth.deeley@lw.com*  
505 Montgomery Street, Suite 2000  
San Francisco, California 94111-6538  
Telephone: +1.415.391.0600  
Facsimile: +1.415.395.8095

Hilary H. Mattis (Bar No. 271498)  
*hilary.mattis@lw.com*  
140 Scott Drive  
Menlo Park, CA 94025-1008  
Telephone: +1.650.328.4600  
Facsimile: +1.650.463.2600

Andrew B. Clubok (*pro hac vice*)  
Susan E. Engel (*pro hac vice*)  
*andrew.clubok@lw.com*  
*susan.engel@lw.com*  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Telephone: +1.202.637.2200  
Facsimile: +1.202.637.2201

Attorneys for Defendants *Twitter, Inc.,*  
*Jack Dorsey and Ned Segal*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE TWITTER, INC. SECURITIES  
LITIGATION

Case No.: 4:19-cv-07149-YGR

This Document Relates To:

**DEFENDANTS' REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF ITS MOTION TO  
DISMISS THE CONSOLIDATED CLASS  
ACTION COMPLAINT**

Date: October 13, 2020

Date: October 11

Time: 2:00 p.m.

Hon: Yvonne Gonzalez Rogers

1                   **MEMORANDUM IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE**

2                   Defendants Twitter, Inc. (“Twitter”), Jack Dorsey and Ned Segal (collectively  
 3 “Defendants”) respectfully request that the Court consider the following documents, attached to  
 4 the Declaration of Susan E. Engel filed concurrently herewith, in support of Defendants’ Motion  
 5 to Dismiss the Consolidated Class Action Complaint for Violations of the Federal Securities  
 6 Laws (the “Complaint,” Dkt. 50):

- 7                   • Exhibit 1, a true and correct copy of the Annual Report on Form 10-K of Twitter, Inc.  
                      for the period ended December 31, 2018, as filed with the Securities and Exchange  
                      Commission (“SEC”) on February 21, 2019;
- 8                   • Exhibit 2, a true and correct copy of a screenshot of a Tweet entitled “Twitter Support  
                      on Twitter,” available at  
                      <https://twitter.com/TwitterSupport/status/1158876245716697089> (last accessed June  
                      10, 2020);
- 9                   • Exhibit 3, a true and correct copy of a webpage entitled “An issue with your settings  
                      choices related to ads on Twitter,” available at <https://help.twitter.com/en/ads-settings>  
                      (last accessed June 3, 2020);
- 10                  • Exhibit 4, a true and correct copy of the Quarterly Report on Form 10-Q of Twitter,  
                      Inc. for the period ended September 30, 2019, as filed with the SEC on October 29,  
                      2019;
- 11                  • Exhibit 5, a true and correct copy of the Q2 2019 Shareholder Letter of Twitter, Inc.,  
                      Exhibit 99.1 to the Form 8-K, filed with the SEC on July 26, 2019;
- 12                  • Exhibit 6, a true and correct copy of the Quarterly Report on Form 10-Q of Twitter,  
                      Inc. for the period ended June 30, 2019, as filed with the SEC on July 31, 2019;
- 13                  • Exhibit 7, a true and correct copy of the transcript of Twitter, Inc.’s Question and  
                      Answer Presentation at the Citi Global Technology Conference 2019, dated  
                      September 4, 2019, available for download from  
                      [https://s22.q4cdn.com/826641620/files/doc\\_downloads/2019/Citi-2019-Transcript.pdf](https://s22.q4cdn.com/826641620/files/doc_downloads/2019/Citi-2019-Transcript.pdf) (downloaded on June 3, 2020);

- Exhibit 8, a true and correct copy of the Responses and Objections to KBC Asset Management NV's Fifth Set of Interrogatories to Defendant Twitter, Inc., filed as Exhibit 20 to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, *In re Twitter, Inc. Securities Litigation*, Case No. 4:16-CV-05314-JST(SK) (N.D. Cal. filed Sept. 16, 2016) (Dkt. No. 413-6);
- Exhibit 9, a true and correct copy of the Declaration of Michael Nierenberg, filed as Exhibit 1 to Defendants' Administrative Motion to File Under Seal Defendants' Motion for Summary Judgment, *In re Twitter, Inc. Securities Litigation*, Case No. 4:16-CV-05314-JST(SK) (N.D. Cal. filed Sept. 16, 2016) (Dkt. No. 340-1);
- Exhibit 10, a true and correct copy of the Statement of Changes of Beneficial Ownership of Securities on Form 4 of Twitter, Inc. on behalf of Ned D. Segal, as filed with the SEC on August 14, 2019;
- Exhibit 11, a true and correct copy of the Statement of Changes of Beneficial Ownership of Securities on Form 4 of Twitter, Inc. on behalf of Ned D. Segal, as filed with the SEC on September 3, 2019;
- Exhibit 12, a true and correct copy of the Statement of Changes of Beneficial Ownership of Securities on Form 4 of Twitter, Inc. on behalf of Ned D. Segal, as filed with the SEC on September 12, 2019; and
- Exhibit 13, a true and correct copy of the Statement of Changes of Beneficial Ownership of Securities on Form 4 of Twitter, Inc. on behalf of Ned D. Segal, as filed with the SEC on October 9, 2019.

All of these documents may be properly considered by the Court in connection with the Motion to Dismiss because they are (i) incorporated by reference into the Complaint, and/or (ii) subject to judicial notice under Rule 201 of the Federal Rules of Evidence.

## I. LEGAL STANDARD

When resolving a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), courts "must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular,

1 documents incorporated into the complaint by reference, and matters of which a court may take  
 2 judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Under  
 3 the incorporation by reference doctrine, a document referenced in a complaint may be “properly  
 4 consider[ed] . . . in its entirety” on a motion to dismiss. *See In re NVIDIA Corp. Sec. Litig.*, 768  
 5 F.3d 1046, 1058 n.10 (9th Cir. 2014). In other words, “[o]nce a document is deemed  
 6 incorporated by reference, the entire document is assumed to be true for purposes of a motion to  
 7 dismiss, and both parties—and the Court—are free to refer to any of its contents.” *City of*  
 8 *Roseville Emps.’ Ret. Sys. v. Sterling Fin.*, 963 F. Supp. 2d 1092, 1107 (E.D. Wash. 2013), *aff’d*,  
 9 691 F. App’x 393 (9th Cir. 2017).

10 Further, the Court may take judicial notice of and properly consider for purposes of a  
 11 motion to dismiss information “not subject to reasonable dispute because it (1) is generally  
 12 known within the trial court’s territorial jurisdiction, or (2) can be accurately and readily  
 13 determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.  
 14 201(b); *see also* Fed. R. Evid. 201(c) (“The court . . . must take judicial notice if a party requests  
 15 it and the court is supplied with the necessary information.”); Fed. R. Evid. 201(d) (“The court  
 16 may take judicial notice at any stage of the proceeding.”). Thus, in considering a motion to  
 17 dismiss under Federal Rule of Civil Procedure 12(b)(6), a court may consider facts that are  
 18 judicially noticeable without converting the motion into one for summary judgment. *United*  
 19 *States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). Allegations in a complaint that are  
 20 contradicted by matters subject to judicial notice or incorporated by reference need not be  
 21 accepted as true. *See, e.g., Hints v. Am. Family Life Assurance Co. of Columbus*, Case No. 4:19-  
 22 cv-03764-YGR, 2020 WL 2512234, at \*3 (N.D. Cal. May 15, 2020) (citing *Sprewell v. Golden*  
 23 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

24 **II. ARGUMENT**

25 **A. Exhibits 1-9 Are Incorporated by Reference in the Complaint**

26 Exhibits 1-9 in this Request are incorporated by reference into the Complaint and should  
 27 be considered by the Court in evaluating Defendants’ Motion to Dismiss. Under the  
 28 incorporation by reference doctrine, documents may be treated “as though they are part of the

1 complaint itself” if the plaintiff “refers extensively to the document or the document forms the  
 2 basis of the plaintiff’s claim.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th  
 3 Cir. 2018) (citing *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). “This is to prevent  
 4 plaintiffs from cherry-picking certain portions of documents that support their claims, while  
 5 omitting portions that weaken their claims.” *In re Aqua Metals, Inc. Sec. Litig.*, Case No. 17-cv-  
 6 07142-HSG, 2019 WL 3817849, at \*5 (N.D. Cal. 2019) (citing *Khoja*, 899 F.3d at 1002). In  
 7 securities actions, courts routinely incorporate by reference the SEC filings that contain the  
 8 allegedly misleading statements, as well as documents that plaintiffs rely on as the basis for their  
 9 allegations that the statements were misleading or that the truth was revealed later in time, or that  
 10 defendants acted with scienter. *See, e.g., In re Apple Inc. Sec. Litig.*, Case No. 19-cv-02033-  
 11 YGR, 2020 WL 2857397, at \*5 (N.D. Cal. June 2, 2020) (incorporating by reference “SEC  
 12 filings [that] contained misleading statements, and they therefore form the basis of plaintiff’s  
 13 claims[,]” and SEC filings used to “demonstrate scienter, which makes them also integral to  
 14 plaintiff’s claims.”); *In re Tesla, Inc. Sec. Litig.*, Case No. 18-cv-04865-EMC, 2020 WL  
 15 1873441, at \*11 (N.D. Cal. Apr. 15, 2020) (incorporating by reference “documents whose  
 16 contents are alleged in the complaint when their authenticity is not questioned”); *Iron Workers*  
 17 *Local 580 Joint Funds v. NVIDIA Corp.*, Case No. 18-cv-07669-HSG, 2020 WL 1244936, at \*5  
 18 (N.D. Cal. Mar. 16 2020) (incorporating by reference “SEC filings . . . and articles” because “the  
 19 plaintiff refers extensively to the documents and the documents form the basis of the plaintiff’s  
 20 claim”) (quotation and alterations omitted); *Evanston Police Pension Fund v. McKesson Corp.*,  
 21 411 F. Supp. 3d 580, 592-93 (N.D. Cal. 2019) (holding that “documents containing alleged  
 22 misrepresentations and corrective disclosures form the basis of a Section 10(b) and are subject to  
 23 incorporation by reference”) (citing *Khoja*, 899 F.3d at 1005); *Park v. GoPro, Inc.*, Case No. 18-  
 24 cv-00193-EMC, 2019 WL 1231175, \*6 (N.D. Cal. Mar. 15, 2019) (incorporating by reference  
 25 documents relied on “to show the truth being revealed” to the market); *In re SunPower Corp.*  
 26 *Sec. Litig.*, Case No. 18-cv-00193-EMC, 2018 WL 4904904, at \*3 n.2 (N.D. Cal. Oct. 9, 2018)  
 27 (incorporating by reference documents referred to “explicitly as the ground for [the allegedly]  
 28 false statements and scienter”).

1       **SEC Filings.** Exhibits 1, 4, 5 and 6 are copies of documents filed by Twitter with the  
 2 SEC. Exhibit 1 is Twitter’s Form 10-K for 2018. Exhibit 4 is Twitter’s Form 10-Q for Q3 2019.  
 3 Exhibit 5 is Twitter’s Shareholder Letter for Q2 2019, which was Ex. 99.1 to the Company’s  
 4 Form 8-K filed with the SEC on July 26, 2019. Exhibit 6 is Twitter’s Form 10-Q for Q2 2019.  
 5 Plaintiffs quote from and cite Exhibit 1 in support of their assertion that scienter can be inferred  
 6 because Twitter generated the bulk of its revenue from advertising and reported the “cost per ad  
 7 engagement” (“CPE”) metric as a key metric in its SEC filings. CAC ¶¶ 43, 46, 124. Plaintiffs  
 8 quote from and cite Exhibit 4 in support of their corrective disclosure and scienter allegations,  
 9 alleging that the Form 10-Q for Q3 2019 disclosed that the software bugs “primarily affected”  
 10 the MAP product and that it disclosed a negative revenue impact. *Id.* ¶¶ 98, 124, 136. Plaintiffs  
 11 quote from and cite Exhibits 5 and 6 as containing alleged misstatements. *Id.* ¶¶ 104-105, 107,  
 12 109, 111, 124.

13       These SEC filings are properly incorporated by reference because they form the basis of  
 14 Plaintiffs’ claims. *See In re Apple Inc. Sec. Litig.*, 2020 WL 2857397, at \*5 (incorporating by  
 15 reference SEC filings that were “integral to plaintiff’s claims” where they contained alleged  
 16 misstatements and supported scienter allegations). They are also properly incorporated by  
 17 reference because the Complaint contains extensive “substantive” references and multiple direct  
 18 quotations to each document. *In re Intel Corp. Sec. Litig.*, Case No. 18-cv-00507-YGR, 2019  
 19 WL 1427660, at \*6 (N.D. Cal. Mar. 29, 2019) (incorporating by reference where documents are  
 20 cited in multiple paragraphs) (quoting *Khoja*, 899 F.3d at 1002); *see also In re Ubiquiti*  
 21 *Networks, Inc. Sec. Litig.*, 33 F. Supp. 3d 1107, 1118 (N.D. Cal. 2014) (remanded on other  
 22 grounds at 669 F. App’x. 878 (9th Cir. 2016)) (incorporating by reference SEC filings).

23       **Documents Containing Alleged Misstatements.** Plaintiffs allege that three additional  
 24 documents contain misleading statements:

- 25       • Exhibit 2 is an August 6, 2019 Tweet from Twitter Support, and Exhibit 3 is a  
 26 webpage from Twitter’s Help Center titled, “An issue with your settings choices  
 27 related to ads on Twitter.” Plaintiffs allege that statements in these documents,

1 which disclosed to users that Twitter had shared certain user data even when users  
 2 had opted out, were misleading. CAC ¶¶ 15, 16, 79, 80, 113-114.

- 3 • Exhibit 7 is a transcript of Twitter, Inc.’s Question and Answer Presentation at the  
 4 Citi Global Technology Conference 2019, dated September 4, 2019. Plaintiffs  
 5 allege that statements in this document, which is a transcript of a Q&A between  
 6 Defendant Ned Segal and analysts, were misleading. *Id.* ¶¶ 115-119.

7 As discussed *supra*, courts routinely find that documents cited by plaintiffs as the basis  
 8 for alleged misstatements are incorporated by reference into complaints in securities actions.  
 9 See, e.g., *In re Apple Inc. Sec. Litig.*, 2020 WL 2857397, at \*5; *In re SunPower Corp. Sec. Litig.*,  
 10 2018 WL 4904904, at \*3 n.2 (incorporating by reference “SEC filings and investor call  
 11 transcripts” that provided “the ground for [defendant’s] false statements and scienter”); *Evanston*  
 12 *Police Pension Fund*, 411 F. Supp. 3d at 592-93 (incorporating by reference documents that  
 13 contain “alleged misrepresentations and corrective disclosures” because they “form the basis of a  
 14 Section 10(b)” claim) (citing *Khoja*, 899 F.3d at 1005).

15 **Documents Underlying Scienter Allegations.** Plaintiffs extensively rely on and refer to  
 16 two documents to support their claims that Defendants acted with the requisite scienter:

- 17 • Exhibit 8 contains interrogatory responses filed in *In re Twitter, Inc. Securities*  
 18 *Litigation*, Case No. 4:16-CV-05314-JST (SK) (N.D. Cal. filed Sept. 16, 2016).  
 19 Plaintiffs cite these interrogatory responses and rely on them as the sole basis for  
 20 their allegation that daily emails containing summaries of “Key Metrics” were  
 21 disseminated to senior Twitter executives, including Defendant Dorsey.” CAC ¶  
 22 88 n.9. Plaintiffs allege that these interrogatory responses support “a reasonable  
 23 inference that Defendants continued to closely follow Key Metrics during the  
 24 Class Period,” and therefore were purportedly aware of a decline in MAP  
 25 revenues at some point in the third quarter of 2019. *Id.* ¶¶ 14, 17, 37, 116, 124-  
 26 130, 138.  
 27 • Exhibit 9 is a declaration also filed in *In re Twitter, Inc. Securities Litigation*,  
 28 Case No. 4:16-CV-05314-JST (SK) (N.D. Cal. filed Sept. 16, 2016). Plaintiffs

1 cite and rely on the declaration as the basis for their allegation that Defendants  
 2 expected the MAP product to have a positive future impact on earnings. CAC ¶  
 3 62; *see also id.* ¶ 132. Plaintiffs allege that Defendants' purported focus on MAP,  
 4 including as evidenced by this 2015 declaration prior to the class period, supports  
 5 a "strong inference" that Defendants were aware of a decline in MAP revenues  
 6 during the class period. *Id.* ¶¶ 131-133.

7 As discussed *supra*, courts routinely find documents cited by plaintiffs as the basis for  
 8 scienter allegations to be incorporated by reference into complaints in securities actions. *See,*  
 9 *e.g., In re Apple Inc. Sec. Litig.*, 2020 WL 2857397, at \*5 (incorporating by reference documents  
 10 used to demonstrate scienter because they are "integral to plaintiff's claims"); *In re SunPower*  
 11 *Corp. Sec. Litig.*, 2018 WL 4904904, at \*3 n.2 (incorporating by reference "SEC filings and  
 12 investor call transcripts" that provided "the ground for [defendant's] false statements and  
 13 scienter").

#### 14       B.     **Exhibits 1-13 Are Properly Subject to Judicial Notice**

15       Judicial notice "is appropriate for adjudicative facts that are not subject to reasonable  
 16 dispute." *In re Intel Corp.*, 2019 WL 1427660, at \*6. Under the judicial notice rule, a court may  
 17 take judicial notice of a fact "not subject to reasonable dispute because it . . . can be accurately  
 18 determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.  
 19 201(b)(2).

20       **SEC Filings.** While Exhibits 1, 4, 5 and 6 are incorporated by reference into the  
 21 Complaint, *supra* Section II.A, the Court may also consider them because they are SEC filings  
 22 properly subject to judicial notice. *See* Fed. R. Evid. 201(b); *Metzler Inv. GMBH v. Corinthian*  
 23 *Colls. Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (citation omitted) (SEC filings subject to  
 24 judicial notice); *Norfolk Cty. Ret. Sys. v. Solazyme, Inc.*, Case No. 15-cv-02938-HSG, 2016 WL  
 25 7475555, at \*1 n.1 (N.D. Cal. Dec. 29, 2016) (citation omitted) (taking judicial notice of SEC  
 26 filings); *In re Intel Corp.*, 2019 WL 1427660, at \*7 (taking judicial notice of Form 10-K that was  
 27 not incorporated by reference into a complaint); *In re Violin Memory Sec. Litig.*, No. 13-CV-  
 28 5486 YGR, 2014 WL 5525946, at \*6 (N.D. Cal. Oct. 31, 2014) (taking judicial notice of SEC

1 filings). Courts routinely take judicial notice of SEC filings to determine what information a  
 2 company “disclosed to the market.” *In re Aqua Metals, Inc.*, 2019 WL 3817849, at \*5 (taking  
 3 judicial notice of SEC filings “for the purpose of determining what was disclosed to the  
 4 market”); *Russian Hill Capital, LP v. Energy Corp. of Am.*, Case No. 15-cv-02554-HSG, 2016  
 5 WL 1029541, at \*3 (N.D. Cal. Mar. 15, 2016) (taking judicial notice of SEC filings to the extent  
 6 that they show defendants “made the statements contained therein”); *Patel v. Parnes*, 253 F.R.D.  
 7 531, 546 (C.D. Cal. 2008) (taking judicial notice of SEC filings “for the purpose of determining  
 8 what statements the documents contain”) (quoting *Lovelace v. Software Spectrum, Inc.*, 78 F.3d  
 9 1015, 1018 (5th Cir. 1996)). Here, the Court may take judicial notice of the fact that Twitter  
 10 disclosed the content of Exhibits 1, 4, and 6.

11           **Publicly Available Documents from Twitter’s Website.** Exhibits 2 and 3 each contain  
 12 alleged misstatements and are incorporated by reference into the Complaint, *supra* Section II.A,  
 13 but they may also be considered because they are subject to judicial notice. Exhibits 2 and 3 are  
 14 each publicly distributed on Twitter’s website, and their existence cannot be reasonably  
 15 questioned. Courts routinely take judicial notice of publicly available content on companies’  
 16 websites. *See, e.g., Reese v. Malone*, 747 F.3d 557, 570 n.8 (9th Cir. 2014) (taking judicial  
 17 notice of university website), overruled on other grounds by *City of Dearborn Heights Act 345*  
 18 *Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605 (9th Cir. 2017); *Letizia v. Facebook,*  
 19 *Inc.*, 267 F. Supp. 3d 1235, 1241-42 (N.D. Cal. 2017) (taking judicial notice of Facebook’s  
 20 online policies); *Opperman v. Path, Inc.*, 205 F. Supp. 3d 1064, 1068 n.3 (N.D. Cal. 2016)  
 21 (taking judicial notice of the Yelp Privacy Policies); *In re Google Assistant Privacy Litig.*, Case  
 22 No. 19-cv-04286-BLF, 2020 WL 2219022, at \*4 (N.D. Cal. May 6, 2020) (taking judicial notice  
 23 of materials from “a publicly accessible website” because “[i]t is well-established that courts  
 24 may take judicial notice of publications introduced to indicate what was in the public realm at the  
 25 time, not whether the contents of those articles were in fact true.”) (internal citation omitted).  
 26 Here too, the Court may consider these publicly available documents for the purpose of  
 27 determining what was actually available to the public.

28

1           **Investor Conference Transcript.** Exhibit 7 contains alleged misstatements and is  
 2 incorporated by reference, *supra* Section II.A, but as it is publicly available and its accuracy  
 3 cannot reasonably be disputed, it is also subject to judicial notice. *See Wong v. Arlo Techs., Inc.*,  
 4 Case No. 19-cv-00372-BLF, 2019 WL 7834762, at \*4 (N.D. Cal. Dec. 19, 2019) (taking judicial  
 5 notice of earnings call transcript) (citation omitted); *Hong v. Extreme Networks, Inc.*, Case No.  
 6 15-cv-04883-BLF, 2017 WL 1508991, at \*10 (N.D. Cal. Apr. 27, 2017) (taking judicial notice of  
 7 “transcripts of conference calls for the purposes of demonstrating what was disclosed to  
 8 investors.”). The Court should consider Exhibit 7 for the purposes of demonstrating what was  
 9 disclosed to investors at the September 4, 2019 Citi Global Technology Conference.

10           **Court Documents.** Exhibits 8 and 9 form the basis of Plaintiffs’ scienter allegations and  
 11 are incorporated by reference into the Complaint, *supra* Section II.A, but they are also public  
 12 records properly subject to judicial notice. “Public records, including judgments and other court  
 13 documents, are proper subjects of judicial notice.” *JGX, Inc. v. Handlery*, Case No. 17-cv-  
 14 00287-BLF, 2018 WL 984856, at \*2 (N.D. Cal. Feb. 20, 2018); *see also Dinan v. SanDisk LLC*,  
 15 Case No. 18-cv-05420-BLF, 2020 WL 364277, at \*3 (N.D. Cal. Jan. 22, 2020) (same); *Harris v.*  
 16 *County of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (taking judicial notice of court  
 17 documents and noting “[w]e may take judicial notice of undisputed matters of public record,  
 18 including documents on file in federal or state courts.”) (internal citation omitted); *Pasillas v.*  
 19 *Deutsche Bank Nat'l Trust Co.*, Case No. 5:12-CV-04123-LHK, 2014 WL 1006300, at \*2 n.5  
 20 (N.D. Cal. Mar. 12, 2014) (taking judicial notice of “court documents already in the public  
 21 record and documents filed in other courts”). Here, Exhibits 8 and 9 are on file in *In re Twitter*,  
 22 *Inc. Securities Litigation*, Case No. 4:16-CV-05314-JST (SK) (N.D. Cal. filed Sept. 16, 2016),  
 23 and the Court may take judicial notice of their content including to demonstrate when the  
 24 documents were filed—long before the Class Period here—and what was actually disclosed in  
 25 those documents.

26           **Forms 4.** Each of the remaining exhibits is properly subject to judicial notice. Exhibits  
 27 10-13 are Forms 4 filed with the SEC, reflecting Defendant Segal’s transactions in Twitter  
 28 securities. Plaintiffs allege that Mr. Segal sold these Twitter securities (CAC ¶ 32), though they

1 do not include those allegations in their substantive scienter allegations. *Id.* ¶¶ 123-144. Nor do  
 2 Plaintiffs attach the relevant Forms 4 to their Complaint. Exhibits 10-13 reflect that these  
 3 transactions were made pursuant to a Rule 10b5-1 plan and therefore, for the reasons argued in  
 4 Defendants' Motion to Dismiss, do not support a cogent inference of scienter. “[C]ourts may  
 5 take judicial notice of SEC Forms 4, even when not referenced in the pleading, to prove that  
 6 stock sales were made pursuant to a Rule 10b5-1 trading plan.” *City of Royal Oak Ret. Sys. v.*  
 7 *Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1059 (N.D. Cal. 2012); *see also In re Facebook,*  
 8 *Inc. Sec. Litig.*, 405 F. Supp. 3d 809, 828-29 (N.D. Cal. 2019) (same, and taking judicial notice  
 9 of Forms 4 “to show[] only that a Rule 10b5-1 plan existed and that stock sales were made  
 10 pursuant to that plan”). Here, Plaintiffs have alleged Mr. Segal’s trading in the Complaint, and  
 11 so it is appropriate for the Court to consider Mr. Segal’s Forms 4 in connection with Defendants’  
 12 motion to dismiss. *Compare Shenwick v. Twitter, Inc.*, 282 F. Supp. 3d 1115, 1124 (N.D. Cal.  
 13 2017) (declining to take judicial notice of Forms 4 because the “Complaint mentions no stock  
 14 sales of any kind”), *with In re Facebook, Inc. Sec. Litig.*, 405 F. Supp. 3d at 828-29.

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2     **III. CONCLUSION**

3                 For the foregoing reasons, Defendants respectfully request that the Court find that:  
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5     (1) Exhibits 1-9 to the Mattis Declaration are incorporated by reference into the Complaint and  
6  
7     (2) Exhibits 1-13 are properly subject to judicial notice.

8     DATED: June 12, 2020

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10                 LATHAM & WATKINS LLP

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*/s/ Michele D. Johnson*  
Michele D. Johnson (Bar No. 198298)  
*michele.johnson@lw.com*  
650 Town Center Drive, 20th Floor  
Costa Mesa, California 92626-1925  
Telephone: +1.714.540.1235  
Facsimile: +1.714.755.8290

Elizabeth L. Deeley (Bar No. 230798)  
*elizabeth.deeley@lw.com*  
505 Montgomery Street, Suite 2000  
San Francisco, California 94111-6538  
Telephone: +1.415.391.0600  
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*andrew.clubok@lw.com*  
*susan.engel@lw.com*  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Telephone: +1.202.637.2200  
Facsimile: +1.202.637.2201

Attorneys for Defendants *Twitter, Inc,*  
*Jack Dorsey and Ned Segal*